

NO. 46001-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

DAVID SOHRAKOFF,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable Richard Brosey, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE COURT'S ERRONEOUS ADVICE REGARDING THE SCOPE OF THE PROHIBITION ON POSSESSION OF FIREARMS WAS A SENTENCING ERROR THAT SHOULD BE CORRECTED REGARDLESS OF WHEN IT WAS DISCOVERED.

Appellant David Sohrakoff was misadvised at his sentencing hearing that he must not "have any guns in your house, car or apartment. Don't be around anybody with a gun." 2RP 28. This advice was in error under State v. Lee, 158 Wn. App. 513, 515, 243 P.3d 929 (2010). In response, the State argues first that Sohrakoff's appeal is time-barred. Brief of Respondent at 2-3. This argument should be rejected because the incorrect advice about the consequences of his conviction is akin to an erroneous sentence.

Erroneous sentences must be corrected whenever they are discovered, even if that is for the first time on appeal or even a personal restraint petition. See, e.g., In re Pers. Restraint of Call, 144 Wn.2d 315, 331, 28 P.3d 709 (2001) ("[A] personal restraint petition can be used to correct a sentence that was unlawfully imposed."); State v. Moen, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996) (imposition of a criminal penalty not in compliance with sentencing statutes may be addressed for the first time on appeal). The rationale for this rule is to bring sentences in conformity with the law and avoid widely varying sentences to stand "for no reason other than the failure of counsel to register a proper objection in the

trial court.” State v. Ford, 137 Wn.2d 472, 478, 973 P.2d 452 (1999). Under this rationale, this Court should not allow the overly broad ban on Sohrakoff’s association with persons with guns to stand, merely because there was no objection below and it was not discovered until the appeal from his motion to withdraw his guilty plea.

The court should also reject the State’s attempt to distinguish Lee. The State argues the language used in Lee was a “directive” while the language used in this case was merely a “warning.” Brief of Respondent at 3-5. This is a distinction without a difference. In both Lee and in this case, the judge advised the defendant regarding the loss of his right to bear arms and attempted to explain the scope of that prohibition to the defendant. Lee, 158 Wn. App. at 515; 2RP 28. In each case, the scope, as explained by the court, was overly broad and should be corrected. Lee, 158 Wn. App. at 517.

Finally, the State argues the court “was doing the Appellant a favor.” Brief of Respondent at 5. That may have been the court’s intention. But that good intention has no impact on this appeal. In Lee, the court declared, “However well intentioned the court’s remarks may have been, the court misadvised Lee.” Lee, 158 Wn. App. at 517. Therefore, the court struck the oral advisement. Id. Because Sohrakoff was misadvised in the same way, the court should apply the same remedy as in Lee and strike the incorrect oral advisement.

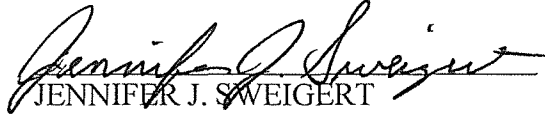
B. CONCLUSION

For the foregoing reasons and for the reasons stated in the opening Brief of Appellant, Sohrakoff requests this Court remand to strike the incorrect advisement about the scope of the restriction on his right to bear arms.

DATED this 11th day of November, 2014.

Respectfully submitted,

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STATE OF WASHINGTON/DSHS

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DAVID SOHRAKOFF,

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COA NO. 46001-7-I

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I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 12TH DAY OF NOVEMBER, 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DAVID SOHRAKOFF
 DOC NO. 364622
 LONGVIEW WORK RELEASE
 1821 1ST AVE
 LONGVIEW, WA 98632

SIGNED IN SEATTLE WASHINGTON, THIS 12TH DAY OF NOVEMBER, 2014.

X *Patrick Mayovsky*

NIELSEN, BROMAN & KOCH, PLLC

November 12, 2014 - 2:47 PM

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